

**Town of Milford
Zoning Board of Adjustment Minutes
May 2, 2013
Kevin DeGroot
Case #2013-05
Variance**

Present: Fletcher Seagroves, Chairman
Zach Tripp
Laura Horning
Bob Pichette
Kevin Taylor

Mike Thornton – Alternate

Katherine Bauer – Board of Selectmen representative

Absent: Paul Butler, Alternate

Secretary: Peg Ouellette

The applicant, Kevin deGroot, owner of Map 25, Lot 53, 30 Union Street, in the Commercial “C” district, is requesting a Variance from Article 5.03.0, Sections 5.03.5:A.1 and 5.03.6:A & B, for a 3-unit residential property on a lot that does not meet the minimum area and frontage requirements and setbacks as required for the change of use.

Minutes approved on June 20, 2013.

Fletcher Seagroves, Chairman, opened the meeting and informed all of the procedures for the meeting. He read the notice of hearing into the record. The list of abutters was read. Abutter Michelle Wright was present. Kevin deGroot, owner of 30 Union Street, was present along with Andrea Kokko of Kokko Realty who was there at the request of Mr. deGroot to assist in present the case and answering any questions. Fletcher Seagroves then invited the applicant forward to present his case.

K. deGroot gave a brief description of what he would like to do, saying the property is a large single-family home in the Commercial district surrounded primarily by multi-family homes and three businesses. There are two- four- five- and eight-family homes nearby. The property had been on the market for 414 days before he purchased it. It is approximately 3,000 SF including an attached barn converted to living space on the main level. He is seeking a variance for conversion into three separate, well maintained residential units which would maximize the use and size of the home. The property is unique, being a very large— enough for a three-family home. It is no longer suitable for a single-family due to its location among multi-family homes. A variance will allow the property to achieve reasonable use. It is the highest and best use which will help blend with the surrounding neighborhood. It is not detrimental to the public welfare and is similar to uses permitted in the district. Intent is to create one 1-bedroom and two 2-bedroom units which will have the lowest impact on the property and neighborhood. It will require extensive upgrades to maximize efficiency.

K. Taylor inquired about parking. With a possibility of six cars on the lot – two cars per unit –where did applicant plan to put parking? He has walked by the property, said there is a cut-in by the track.

K. deGroot referred to a diagram in the application packet showing proposed parking. He said the property slopes on the side to a pea stone gravel back yard which he thought had been used as for parking campers. (Diagram showed two parking spaces, front to back, on the left side and four spaces on the left side, two in front of two) Applicant stated if there is not sufficient space there, then there is additional area in the back of the property.

F. Seagroves stated that parking was one of his concerns. He mentioned possibly moving parking down a bit.

A. Kokko stated it could easily be moved to the back. They felt it would accommodate six cars easily, but if the Board felt so, it could be moved to the back. The garden area could be lengthened a little to get in the fourth car. There would be no widening at all.

F. Seagroves stated if someone wants to get their vehicle out, it is always the one wanting to get out that is at the back.

K. deGroot said the abutting properties are all bumper to bumper – not efficient, but it was working. He mentioned a tree that has not been moved yet to accommodate parking.

B. Pichette asked if the barn would be one apartment.

K. deGroot responded it would

B. Pichette asked where the other one would be.

K. deGroot said it is in second floor of the main house. Each unit is about 800-850 sq. ft. The barn is a little bigger; it has its own basement, which is not included in that. Each unit will have it own storage basement under each unit and laundry facilities inside each unit.

A. Kokko stated it will easily accommodate the proposed units.

Z. Tripp if is currently set up as its own apartment.

K. deGroot stated he didn't know. The barn is partly finished on the main floor with a mini-kitchen and a couple of cupboards and a bathroom. He was not sure to what extent it was used. It is partially finished; upstairs is not.

Z. Tripp asked if the main house was currently set up as a single-family.

K. DeGroot said it was.

A. Kokko stated that each proposed unit already has its own egress. She pointed out the entrances for the barn and main level of the home, which have access to the back deck, and the second floor entrance to

the main home, with a staircase when entering. So it is set up for egress for all three units without changing the exterior of the building.

Z. Tripp stated that one of the acceptable uses under Special Exception is an office and asked if applicant considered that.

K. deGroot said they hadn't, but it seemed this proposal was the lowest impact use. Based on traffic to the home, not knowing what office hours would be, to minimize the impact. In some of their other three-families they have had only had 8 to 9 people total in all three units. He felt it was the least impact.

L. Horning said, looking at the map of the property – and she has been by the property – she had concern about the way the cars are stacked, when they back out into the street. That might have been a foreseeable concern. On the map, none of the surrounding properties have the stacked parking. They have side-by-side parking. It seemed the wise choice would be to move that parking to the back. The Board must consider emergency situations and safety. Having three or four cars having to get out in the winter to allow one car to get out is a precarious situation.

A. Kokko noted that on the corner there is a three-unit multi-family with stacked parking.

L. Horning stated that the room for maneuverability is more than they have in the front. That would be her only concern with the layout.

A. Kokko stated in this case, Unit 1 and 2 would be assigned the two-car stack.

L. Horning asked if Unit 1 would get the first position, A & B and Unit 2 would get the second position A & B?

A. Kokko said yes. It would be a situation of someone asking their spouse to move their car, not someone having to knock on another tenant's door to ask them to move their car.

L. Horning thanked her for clarifying that.

A. Kokko stated it was her opinion that it can accommodate two to four cars.

L. Horning said she would say that was correct.

A. Kokko said two of the units have very easy access through the back.

K. deGroot said it opens up quite a bit as you enter.

L. Horning said she has seen it.

A. Kokko stated it was actually very large.

L. Horning stated it is actually a very well laid-out lot.

F. Seagroves raised the issue of visitor parking. It is a problem up and down the street. He said they do have the church parking down there so they keep them off the street.

A. Kokko said they were not thinking there would ever be more than six cars for the property – maximum of two cars per unit.

F. Seagroves noted there are a total of five bedrooms.

L. Horning said if there were a three-bedroom she would be more concerned. A lot of young couples without children would take a 2-bedroom, or older couples who are transitioning.

F. Seagroves said under the Commercial "C" district two-family and multi-family dwellings with accessory uses and structures, with their respective related conditions set forth in Residence "B" are allowed. In other words, these are accepted in Residence C district, but must meet the criteria of Residence B. Under Residence B it mentions yard requirements that each structure should have at least 30 feet from the front lot line and 15 feet from each side. That is the variance being requested. It is acceptable but must meet the requirements.

F. Seagroves then opened the meeting for public comments.

Michelle Wright of 32 Union Street came forward. She stated that the foundations of her house and the deGroot property are 4 feet, 8 inches apart. Her house is next to the two parking spaces in front. If extended, they will be parking – and already are – right outside her window. She has no yard, except for her back yard. Parking in the back will take away their enjoyment of even that. She was not happy with people parking outside her window. She didn't feel there was enough room. She stated if a train went by, they would have to wait for the train. She asked that the property remain a single-family home. She said

she had a lot of other things to say but she just felt there was not enough room. It will take away enjoyment of her back yard. Three families living there will be a lot for a house next to a single-family home that close together.

L. Horning asked, for clarification, which side her house is on, facing the property.

M. Wright said the right-hand side.

L. Horning said on the right, in the apartment building?

M. Wight said it is a duplex.

L. Horning started to state, if the proposed tenants use the egress next to the railroad tracks...

M. Wight said she had looked at that and didn't think they had enough room.

L. Horning said if they use the egress they already have, which has been longstanding and park in front of the garage next to the barn..

M. Wight said that is right next to her back yard.

L. Horning said she had walked around the property and was trying to clarify the visibility of those vehicle from Ms. Wright's building.

John Wright, part owner of 32 Union Street, asked to speak. He stated that Ms. Wright sees the two parking spots on the right side from her bedroom window at the front of the house.

M. Wight stated she didn't feel cars could fit there.

L. Horning stated she had parked her car there.

There was discussion among L. Horning, M. Wight and J. Wight as to whether four cars would fit there.

After further discussion it was determined that the bedroom windows look at the already existing parking.

J. Wright stated that applicant is going to remove a tree and put in four spaces, and the Wrights felt there was not enough room for that many spaces or for that many people to live there.

Marcia Szumiesz, resident of 65 Union Street spoke, saying she has rented from Mr. deGroot for 17 years and he has been an excellent landlord who maintains the property and is selective about tenants. He responds immediately whenever there is a problem. She had nothing but good to say about him.

He asked if there were any comments or questions from the board.

B. Pichette asked about the distance from the duplex to the property line.

K. deGroot said if you stood between the buildings and raised your arms, you could probably touch both.

L. Horning said it is very close and has been that way many years.

Z. Tripp said it is 2.5 feet from the lot line.

B/ Pichette said on one side, but on the other side there are homes.

L. Horning asked the location of the lot and the tree that the abutter mentioned and where there is an ability to buffer that.

K. deGroot said he didn't think so. The tree is getting big and will have to come down eventually as it is touch both roof lines. The only thing he could do is prune it but he didn't think they could save it in order to enlarge the parking.

Z. Tripp asked the location of the tree, and it was pointed out.

K. deGroot said it is almost touching the abutter's property.

K. Taylor asked the applicant if he puts parking down there, if he would be willing to buffer it with a hedge or something.

K. deGroot responded yes.

A. Kokko said they would have to look into it; it would have to some type of arborvitae or something that will grow up but not out, with only 2.5 feet.

L. Horning mentioned the issue of having to maintain it by clipping.

K. Taylor stated they can't do anything with the driveway because of its close proximity.

L. Horning stated it has been that way for many years. She stated she has a large family and at any one time there could be 7 or 8 cars in her driveway – at a single-family home.

A. Kokko stated the market has proven that it is not desirable as a single-family home. But the house is so large it lends itself to multi-family. As stated, there could be as many cars with a single-family house.

F. Seagroves asked for any further public comment.

M. Wright asked, if the applicant is going to make it more than one unit, can she request a fence? A multi-family will take away all enjoyment of her back yard. She doesn't have any land.

K. deGroot stated he would be agreeable to do it but he wasn't sure a 6 to 8 ft. fence between would look good aesthetically. The roofs would drip on it.

K. Taylor asked Ms. Wright if she is asking for fence from the back yard, or from the street all the way down because of the parking.

M. Wright said all the way down.

K. deGroot said he would be willing to do it.

F. Seagroves said he couldn't do it without major support.

A. Kokko said to block out the parking lot would take a very high fence.

L. Horning said it appeared the parties were agreeable to negotiating and she would encourage that. It sounded like the applicant was willing to put up shrubbery in the back to alleviate M. Wright's concerns.

M. Wright said she would prefer a fence. She has been in the house for three years and have a 30-year mortgage so they don't plan on going anywhere.

L. Horning asked applicant about the location of the property line and whether there is room.

K. deGroot said he didn't know at this point but would be agreeable.

L. Horning asked the Chairman how he felt about addressing that.

F. Seagroves said they could make a stipulation. He couldn't say at this point exactly what to do.

L. Horning said she didn't think that was in the Board's purview.

K. deGroot said he is willing to do it.

L. Horning thanked him, saying he relieved the Board of responsibility.

Katherine Bauer (Selectmen's representative to the Board) of 247 North River Road, asked to speak. She said the ZBA has every right to grant with conditions and can be very specific. If they wish to require a fence, they can be specific. Condition might be in order just to take care of any further disagreement between the neighbors. If it is stipulated then it becomes the law.

F. Seagroves said he is aware they can.

K. Bauer said if someone wants to appeal this, then the Board has done it. It is up to the Board if they wish to make a condition.

Z. Tripp asked whether this would be a change of use and whether it would go before the Planning Board.

A. Kokko said they were told it would.

L. Horning said for site evaluation because of the floor plan.

A. Kokko wasn't positive. She was told the three-unit would have to go before the Planning Bd if it was approved.

Z. Tripp said if approved some sort of dividing of the two properties, he would be more comfortable with the Planning Bd. doing that.

F. Seagroves and L. Horning agreed with sending that to the Planning Bd for recommendations.

F. Seagroves read into the record two e-mails received regarding the case. The first was addressed to Bill Parker from B. Gonzalez, the abutter at 29 Lincoln Street stating he has no objection to the property being a three-family home. Signed by B. Gonzalez, Trustee of 29 Lincoln Street and Silva Trustee of 195 Silva Property. The second was an e-mail received 5/2 to the Town of Milford ZBA from Robert Kokko (spelling?), member of BS.Cars. LLC stating he had no issue with Kevin deGroot's proposal to renovate the property at 30 Union St into a 3-unit residential property which will be kept with the neighborhood as a family property.

F. Seagroves closed the public portion of the meeting and asked the applicant to read his application to go through the criteria for a variance. K. deGroot asked Ms. Kokko to read the application into the record.

1. Granting the variance would not be contrary to the public interest because:

Improvements to the existing building will not only upgrade the quality and appeal of the property, but additionally enhance the desirability of the surrounding neighborhood and

ultimately, the Town of Milford.

2. The use is not contrary to the spirit of the ordinance because:

The property would fit in and blend well with the present and immediate neighborhood (Union Street) which is predominantly made up of well maintained multi-unit dwellings,. The potential improvements to the property will enhance the health, welfare, and community while increasing the values of surrounding properties.

3. Granting the variance would do substantial justice because:

Additional units will justify quality improvements and expenditures to structure and existing building. Quality improvements and renovations will increase and enhance the value of surrounding properties. Property improvements provide a “social justice” and responsible attitude toward the community.

4. The proposed use would not diminish surrounding property values:

Improvements/renovations will enhance the structure, visibility, and curb appeal of the property itself and surrounding neighborhood. Granting the variance request will enrich enhance, and improve property values due to the quality of materials and craftsmanship by qualified and experienced contractors.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Existing building and property can readily, reasonably and comfortably accommodate additional units without detracting from the values and appearances of surrounding properties. Property is currently the only single family home in the immediate area; highest and best use of the property is a 3 unit residential dwelling;

ii) and; The proposed use is a reasonable one because:

Based on size and location of property, it allows for reasonable adaptations for highest and best use to accommodate and 3 units without adversely affecting the character of the neighborhood or requiring additions or modifications to the exterior of the property, all taking into account impact on schools, traffic, and availability of affordable housing.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

Property is ideally suited for a 3 unit residential dwelling. Units to be well appointed and affordable, constructed within the existing footprint with quality material by qualified and licensed contractors within the Town of Milford building codes. Proposed renovations and improvements would enhance and blend perfectly with the existing large multi-dwelling structures in the surrounding area in the Town of Milford.

F. Seagroves stated the footprint for the building would not change.

A. Kokko stated that was correct.

F. Seagroves said other than the addition of the decks.

A. Kokko said the decks are existing. There is no change to the exterior of the building addition-wise – no impact.

F. Seagroves asked if the board had any additional comments or questions.

Z. Tripp asked if additional lighting will be needed for the exterior for the additional unit and whether there is lighting there.

K. deGroot said there is lighting but he didn't know if it worked. Some lights were blown over. If not, he will stress that.

F. Seagoves asked for any further questions. There were none, so they moved on to the discussion of the criteria.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp – yes. Given the location of the building and current traffic on the street, he didn't Believe it was contrary to the public interest. It is allowed in district C and B. They are really there to approve the setback. It is a pre-existing structure. It is fine, with one exception- if parking is okay, highlighting what the neighbor was discussing. Maybe the can put together a condition to address parking. It won't change the character of the neighborhood. No effect on public interest.

K. Taylor – yes. He has same concerns re parking.

L. Horning – yes. Agrees with Zack and Kevin. She doesn't think it will be contrary to the public interest. As the applicant testified and Zach pointed out, it is an area that already has two and three apartment building and houses, single homes with two or three apartments in them. She is more concerned with parking.

F. Seagroves – agreed. The Handbook mentions threat to health, safety and general welfare of the public. Safety is parking.

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor – yes

B. Pichette – yes. It would not result in overcrowding by only having a two more apartments. There are many multi-families in the area.

L. Horning – agreed. Zoning for the B district is to incorporate higher densities. This is one of them. Agrees it would not at all violate the spirit of the ordinance; it flows with the spirit for that area and that house.

Z. Tripp – Residential B district wording "other uses which are compatible with these residential densities. Regarding frontages, it is already a single-family home that has frontages and bringing in a three-family will not change that spirit.

F. Seagroves agreed. This is a commercial district so under special exception it can be granted. But you have to go back to Residential B where they talk about frontage. He feels this is within the spirit of the ordinance.

3. Would granting the variance do substantial justice?

B. Pichette – yes. Property is well suited for three family dwelling.

K. Taylor – yes

L. Horning – agreed. Granting would do substantial justice in this case for reasons already cited.

Z. Tripp – agreed with Board members. Loss to the applicant would not be outweighed by gain to the general public.

F. Seagroves – agreed.

4. Could the variance be granted without diminishing the value of abutting property?

L. Horning – yes. It could be done without diminishing value of the abutting property. As stated by other Board members, and the applicant, they are all familiar with the property – most are multi-family families in that area. Applicant testified this property was on the market quite a long time. Question is whether loss to the individual is outweighed by gain to the public. Loss to the individual would be outweighed by that.

K. Taylor – yes. There is no change to footprint of the property. It has been there. He would see no impact.

Z. Tripp – He drove by the property. It looks like a multi-family. Only concern would be the abutter

B. Pichette – applicant stated he will make improvements and renovations so it will improve the value.

F. Seagroves agreed. It won't diminish value of surrounding property.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Z. Tripp – yes. What makes the property unique from others in the area – in fact it is very similar to those in the area. Applying setbacks would be unnecessary hardship. It is a large building on the market for a long time. Trying to put a single family in a 3,000 sq ft building in that location would be unrealistic. Since the current building already has reduced setbacks and area and the lot is pre-existing. It is already non-conforming. Denying the use of going to two or three family would be an unnecessary hardship. It is a reasonable use. He drove by and thought it was a multi-family. It fits with the current neighborhood.

K. Taylor – yes. It is pretty much grandfathered. It has always been like that. It would be more hardship for applicant to not grant. House was not selling for over a year and it is probably best to change the use of it.

L. Horning – agreed. Denial of the variance would represent unnecessary hardship. It is currently a single family with large square footage in a multi-family dense area. Speaking to what Zach said on the size of the lot, squeezing one large family in there and adding to the fact that the property has been existing already with reduced setbacks, it is not reasonable to expect the property owner to meet those square footage requirements for literal enforcement of the ordinance and no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

B. Pichette – agreed. Unnecessary hardship would drive applicant from changing from changing to three apartments versus one. It is a better use of the property.

F. Seagroves agreed with all Board members. Property is an old house built before zoning was there. They are not changing the footprint of the building. He could see where they could grant it.

F. Seagroves asked about going over stipulations before a vote.

L. Horning agreed with Zach that they should make it specific referring to Planning Bd recommendations for a border between the applicant and his neighbor.

F. Seagroves asked about adding parking?

L. Horning said yes.

F. Seagroves mentioned some type of barrier.

L. Horning said some type of buffer.

F. Seagroves said leave that to the Planning Bd. He asked for a motion.

L. Horning made a motion to place a condition on this applicant that they refer to the Planning Bd for buffer and parking recommendations based on approval.

Zach seconded the motion.

K. Taylor – yes.

B. Pichette – yes

L. Horning – yes

Z. Tripp – yes

F. Seagroves – yes

F. Seagroves read, after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote.

1. Would granting the variance not be contrary to the public interest?

L. Horning – yes B. Pichette – yes K. Taylor – yes Z. Tripp – yes F. Seagroves – yes

2. Could the variance be granted without violating the spirit of the ordinance?

Z. Tripp – yes L. Horning – yes B. Pichette – yes K. Taylor – yes F. Seagroves – yes

3. Would granting the variance do substantial justice?

B. Pichette – yes Z. Tripp – yes L. Horning – yes K. Taylor – yes F. Seagroves – yes

4. Could the variance be granted without diminishing the value of abutting property?

K. Taylor – yes B. Pichette – yes L. Horning – yes Z. Tripp – yes F. Seagroves – yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

L. Horning – yes Z. Tripp – yes B. Pichette – yes K. Taylor – yes F. Seagroves – yes

F. Seagroves asked if there was a motion to approve case # 2013-05, a request for a variance, with stipulations.

Z. Tripp made the motion to approve Case #2013-05 with stipulations.

L. Horning seconded the motion.

Final Vote

B. Pichette – yes

K. Taylor – yes

Z. Tripp – yes

L. Horning – yes

F. Seagroves – yes

Case #2013-05 was approved by a unanimous vote.

F. Seagroves reminded the applicant of the thirty (30) day appeal period and that applicant will be going to the Planning Board.